PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference CYPR 101	**FOR FURTHER ACTION**	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)
International application No. PCT/US03/23088	International filing date *(day/month/year)* 24 July 2003 (24.07.2003)	Priority date *(day/month/year)* 24 July 2002 (24.07.2002)
International Patent Classification (IPC) or national classification and IPC IPC(7): A61K 31/165 and US Cl.: 514/620		
Applicant CYPRESS BIOSCIENCES, INC.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 3 sheets, including this cover sheet.

   ☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

   These annexes consist of a total of ___ sheets.

3. This report contains indications relating to the following items:

   - I ☒ Basis of the report
   - II ☐ Priority
   - III ☐ Non-establishment of report with regard to novelty, inventive step and industrial applicability
   - IV ☐ Lack of unity of invention
   - V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
   - VI ☐ Certain documents cited
   - VII ☐ Certain defects in the international application
   - VIII ☐ Certain observations on the international application

Date of submission of the demand 23 February 2004 (23.02.2004)	Date of completion of this report 03 May 2005 (03.05.2005)
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/ US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer Vickie Kim Telephone No. (571) 272-1600

Form PCT/IPEA/409 (cover sheet)(July 1998)

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/US03/23088

I. Basis of the report

1. With regard to the elements of the international application:*

☒ the international application as originally filed.

☒ the description:
pages 1-25 as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.

☒ the claims:
pages 26 and 27, as originally filed
pages NONE, as amended (together with any statement) under Article 19
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.

☒ the drawings:
pages 1-3, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.

☐ the sequence listing part of the description:
pages NONE, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.
These elements were available or furnished to this Authority in the following language _____ which is:

☐ the language of a translation furnished for the purposes of international search (under Rule23.1(b)).

☐ the language of publication of the international application (under Rule 48.3(b)).

☐ the language of the translation furnished for the purposes of international preliminary examination(under Rules 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

☐ contained in the international application in printed form.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority in written form.

☐ furnished subsequently to this Authority in computer readable form.

☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages NONE

☐ the claims, Nos. NONE

☐ the drawings, sheets/~~fig~~ NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

** Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).*
*** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.*

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/US03/23088

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)	Claims NONE	YES
	Claims 1-18	NO
Inventive Step (IS)	Claims NONE	YES
	Claims 1-18	NO
Industrial Applicability (IA)	Claims 1-18	YES
	Claims NONE	NO

2. CITATIONS AND EXPLANATIONS

Claims 1-18 lack novelty under PCT Article 33(2) as being anticipated by Wong et al(US5532244).
The claims are drawn to a method of treating or preventing atypical depression secondary to pain using a pharmaceutical composition comprising an effective amount of a dual norepinephrine serotonin reuptake inhibitor(NSRI) or triple reuptake inhibitor(TRI) such as milnacipran to alleviate or prevent at least one symptom of atypical depression.
US'244 teaches a composition containing milnacipran (10-100mgx1-2 times daily) and its use in the treatment of all types of depressions, see columns 6 and 13. Furthermore, US'244 also teaches that the patented invention is also useful for treating many other conditions including pains(e.g. neuropathic pain), see column 14. All the critical elements required by the claims are well taught by the cited reference. Minor variations including dosage regimens are well known and conventionally performed in routine medical practice and thus, they do not render the claims patentable. All the claims lack the novelty and inventive steps.

Claims 1-18 meet the criteria set out in PCT Article 33(4), and thus the claimed invention has industrial applicability because the subject matter claimed can be made or used in industry.

---------- NEW CITATIONS ----------

NONE